

AMENDMENTS TO THE DRAWINGS

The attached sheet of drawings, which includes Figures 1 and 2, replaces the original sheet including Figures 1 and 2.

Attachment: Replacement Sheet (Figures 1 and 2)

REMARKS

Claims 1-18 are pending in the current application. Claims 1 and 18 are independent claims.

Drawing Objection

The drawings are objected to under 37 C.F.R. § 1.83(a) for not illustrating “integrated circuitry”. Applicant directs the Examiner to amendments made in the Specification referring to a control circuit 42 in replacement Figures 1 and 2 (See page 9, lines 3-11 of the amended Specification). Applicant respectfully submits that the “integrated circuitry” (e.g., which may read on the control circuit 42) is now adequately shown in the Figures. Applicant respectfully requests that the Examiner withdraw this drawing objection.

35 U.S.C. § 112

Claims 11-12 stand rejected under 35 U.S.C. § 112, second paragraph, because “it is not clearly understood how the numeral 5 ‘comma’ 0 represents the pressure force of the switch element” (see page 3 of the Office Action). By this Amendment, this minor informality has been eliminated. Further, with respect to claim 12, Applicant has corrected the spelling of “perpendicular”. As such, Applicant respectfully requests that the Examiner withdraw this rejection.

35 U.S.C. § 102(b) Greenwood

Claims 1, 3-9, 13 and 17-18 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Greenwood. Applicant respectfully traverses this art grounds of rejection.

The Examiner states with respect to claims 1, 11 and 12 that Greenwood discloses the claimed invention "[s]ince the diameter of the attached controlling means is larger than the face of the in-the-ear hearing aid of Greenwood and is proximate portions of the auricle such that it would be adapted to be responsive to a force applied to a part of an auricle of an ear of a hearing aid user" (see page 3 of the Office Action). Similar statements are provided by the Examiner in connection with independent claim 18.

Greenwood discloses the use of decorative elements in connection with in-the-ear (ITE) mounting hearing aids. For example, the decorative element 16, 216, 316 is attached to the volume control, and the volume control is operated by rotation of the decorative element (see column 4, lines 14-17 and column 6, lines 7-14 of Greenwood). A knob 128, positioned in the middle of the ear, and extending through the decorative element 116 is rotated in order to provide an adjustment of the volume (see column 3, lines 52-54 of Greenwood).

Alternatively, a finger is pushed against the surface of the flexible decorative element 416, 516, thereby controlling the volume (see column 5, lines 35-39 and column 6, lines 14-21 of Greenwood).

The Examiner's apparent suggestion that the decorative element 16 of the disclosed ITE hearing aid 12 could be located proximate to portions of the user's auricle, and thereby be responsive to a force applied to a part of the auricle, is purely speculative and has neither implicit nor explicit support anywhere in the specification of Greenwood. Applicant reminds the Examiner that the Examiner must provide adequate evidence to support a factual assertion

which is neither explicit nor implicit in the prior art upon challenge by the Applicant (see MPEP § 2144.03(c)).

Furthermore, by studying the actual placement of the ITE hearing aid 12 in the outer ear of the user as disclosed in Figs. 1-8 of Greenwood, it appears that the face portion of the hearing aid, which also holds the control knobs, protrudes past the auricle of the user's ear so the auricle rests on, or contacts, the hearing aid casing. Since the hearing aid casing lacks any control means, Applicant cannot understand how the hearing aid casing may be responsive to a force applied to a part of an auricle of the user's ear.

Rather, a review of Figs. 7 and 9 of Greenwood indicates the face portion may be responsive to a force applied to the decorative element 16 and not to a part of an auricle of the user's ear as claimed in independent claim 1.

Further, it appears that the decorative element 16, 216, 316 cannot be in contact with the ear (e.g., in order to be able to rotate), and as such Applicant again cannot understand how the decorative element may be responsive to a force applied to a part of an auricle of an ear of a hearing aid user as generally recited in independent claim 1.

In view of the above remarks, Applicant respectfully submits that Greenwood cannot disclose or suggest a controlling means "adapted to be responsive to a force applied to a part of an auricle of an ear of a hearing aid user" as recited in independent claim 1 and/or a removing means having "a stiff member adapted to remain in essentially the same predetermined position at least during normal deflection of said stiff member" as recited in independent claim 18.

Applicant respectfully requests that the Examiner withdraw this art grounds of rejection.

35 U.S.C. § 103 (a) Greenwood

Claims 10 and 14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Greenwood. Applicant respectfully traverses this art grounds of rejection.

Initially, Applicant agrees with the Examiner in that “Greenwood does not specifically teach the switching means comprising an on/off switch” (see page 5 of the Office Action). The Examiner appears to take official notice that the “switching means” feature is well-known. Even assuming for the sake of argument that the Examiner is correct in this assertion, Applicant respectfully submits that Greenwood includes deficiencies as discussed above with respect to the 35 U.S.C. § 102(b) rejection. As such, Greenwood cannot disclose or suggest the features present in independent claim 1.

As such, claims 10 and 14, dependent upon independent claim 1, are likewise allowable over Greenwood at least for the reasons given above with respect to independent claim 1. Further, Applicant challenges the Examiner’s official notice with “that it is known for volume control to include a range of zero (off) in addition to values greater than zero (on) for battery conservation” (See Page 5 of the Office Action). As discussed above, pursuant to 2144.03(c), the Examiner must provide adequate evidence to support a factual assertion made by the Examiner without a supporting reference upon challenge by the Applicant.

Applicant respectfully requests that the Examiner withdraw this art grounds of rejection.

Reconsideration and issuance of the present application is respectfully requested.

CONCLUSION

Accordingly, in view of the above amendments and remarks, reconsideration of the objections and rejections and allowance of each of claims 1-18 in connection with the present application is earnestly solicited.

Should there be any outstanding matters that need to be resolved in the present application; the Examiner is respectfully requested to contact the undersigned at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKEY, & PIERCE, P.L.C.

By _____

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JAC/DAP/cdw

Attachments: Replacement Drawings of Figures 1 and 2 (two (2) sheets)